

AMENDING THE ACT COMMONLY KNOWN AS THE MATERIALS ACT

JUNE 25, 1952.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. REGAN, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany H. R. 8341]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 8341) to amend the act of July 31, 1947 (61 Stat. 681), having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

The purpose of H. R. 8341 is to prevent the acquisition of public lands for uses other than mining by means of location under the mining laws based on the existence of deposits of sand, stone, gravel, pumice, pumicite, and cinders—common materials of widespread occurrence. The bill would also provide a better and more orderly means of disposing of such materials as would serve the greater public interest.

H. R. 8341 would amend the Materials Act so as (1) to prohibit the location and patenting of mining claims under the United States mining laws where such locations are based upon the discovery of deposits of sand, stone, gravel, pumice, pumicite, and cinders, and (2) to provide that such deposits when situated on public lands of the United States shall be disposed of exclusively under the Materials Act, except where laws provide for the disposition of such materials from specified areas or authorize their disposition for the purposes and in the manner provided in the Federal reclamation law.

The committee points out that placer deposits of gold, tungsten, ilmenite, rutile, and other minerals generally occur in deposits of sand and gravel; lode deposits of various minerals may be found wholly or partly covered by deposits of sand, stone, gravel, pumice, pumicite,

or cinder; and deposits of stone may contain deposits of valuable minerals. Therefore, under the Materials Act, as it is proposed to be amended by H. R. 8341, public lands which contain deposits of sand, stone, gravel, pumice, pumicite, and cinders would continue to be subject to location and patenting under the United States mining laws where such location is based upon the discovery on said lands of other minerals, specifically named in the location notice, which are subject to location and patenting under the mining laws of the United States.

Where such mineral location is made, the holder of the claim, if it be valid, acquires full rights of possession to all minerals thereon including deposits of sand, stone, gravel, pumice, pumicite, and cinders unless such materials have been sold or a notice of sale of such materials has been published prior to the date of the recordation of the mineral location—in which case H. R. 8341 provides that:

Rights acquired under such mineral location and any subsequent patent issued pursuant thereto, however, shall be subject to and shall not interfere with the rights of any purchaser to purchase and remove materials which have been sold under the terms of this Act where such contracts of sale were made pursuant to notice of sale first published prior to the date of the recordation of said mineral location.

It should be noted that H. R. 8341, if enacted into law, would not apply to or affect valid mineral locations based on the discovery of valuable deposits of sand, stone, gravel, pumice, pumicite, and cinders, which are made prior to such enactment.

The Materials Act would be further amended by H. R. 8341 to provide that the provisions of the act shall apply to lands in the national forests and that the materials described in the act, as it is proposed to be amended, may be disposed of by the Secretary of Agriculture pursuant to the terms, conditions, and limitations of said act.

The basic provisions of H. R. 8341 were originally introduced as H. R. 4916 on July 23, 1951. To simplify the presentation and further consideration of this legislation, a clean bill, H. R. 8341, was introduced embodying the amendments adopted by the Subcommittee on Mines and Mining of this committee.

It is the considered opinion of this committee that H. R. 8341, if enacted into law, would serve the public interest by providing greater Federal control over the utilization of the public lands, including lands in the national forests, without interfering in any way with the development of mineral resources on said lands.

No appropriation of Federal funds is authorized or required by this act.

The Committee on Interior and Insular Affairs unanimously recommends the enactment of H. R. 8341.

DEPARTMENTAL REPORTS

Favorable reports recommending the enactment of this legislation have been made by the Department of the Interior and the Department of Agriculture and are presented below in full.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 4, 1952.

HON. JOHN R. MURDOCK,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.*

MY DEAR MR. MURDOCK: This is in reply to the request of your committee for a report on H. R. 4916, a bill to amend the Act of July 31, 1947 (61 Stat. 681).

I recommend that this bill be enacted, with certain minor clarifying amendments.

The act of July 31, 1947 (61 Stat. 681), as amended by the act of August 31, 1950 (64 Stat. 571; 43 U. S. C., 1946 ed., Supp. IV, secs. 1185-1188), is commonly known as the Materials Act. H. R. 4916 would amend this act by adding two new sections, to be designated as sections 5 and 6.

The proposed section 5.—Under the proposed new section 5, with which this Department is concerned primarily, deposits of sand, stone, gravel, pumice, pumicite, and cinders on public lands of the United States would be disposed of exclusively under the Materials Act. This act now authorizes the Secretary of the Interior to sell, or issue free use permits for, such materials on the public lands only if such disposal "is not otherwise expressly authorized by law, including the United States mining laws."

Many of these commonplace materials are found in deposits of varying thickness over the earth's surface. They can be removed usually by stripping the surface in a very short period of time. Those genuinely interested in the use or sale of these materials ordinarily have no real interest in title to the land itself. The value of such materials is difficult to ascertain, moreover, since it depends so much on incidental factors like the proximity of the deposits to prospective consumers, local needs, and the like, rather than on any generally recognized value of the materials such as may be ascribed to valuable deposits of gold, coal, or similar minerals.

Serious difficulties are encountered, consequently, by both the Federal Government and the public in determining whether deposits of sand, stone, and these other materials on public lands are subject to the general mining laws (which apply to "valuable mineral deposits") or may be disposed of by sale or free use permits under the Materials Act. Many of those sincerely interested in the commercial or local use of the materials would prefer to gain security and recognition of definite and exclusive rights to remove the materials by contract or permit, rather than to encounter the problems involved in proving the existence of a valid mining location.

If patent is acquired as contemplated under the general mining laws, it is likely that the lands often will be abandoned and title forfeited for nonpayment of local taxes after the materials have been removed from the lands. If, on the other hand, disposals of these materials were made under the Materials Act, so that title to the lands does not leave the Government, the lands may be put to other beneficial land uses under the public land laws.

A particularly serious land problem is created in the case of persons who occupy public lands for purposes other than development of minerals under the guise of making locations under the general mining laws for sand, stone, or other materials of the types mentioned in H. R. 4916. Because of the wide dispersal of these materials, whether actually of substantial value or not, it is a simple matter to establish a claim which needs considerable effort and expense for the Government or other interests to contest. Serious injuries may be done to the lands involved and the full utilization of the lands prevented. In many cases, the development of these materials is impeded by claimants who tie up the lands without any intention of vigorous development of the resources.

The enactment of H. R. 4916 is particularly urgent to make possible the development of these materials on lands reserved from the operation of the mining laws. Under Executive Order 6206 dated July 16, 1933, for example, a large area of public land, most of which is south of Owens Lake in Inyo County, Calif., was withdrawn for the benefit and protection of the water supply of the city of Los Angeles. This particular withdrawal prevents the location of nonmetalliferous minerals under the mining laws. The area contains some large and valuable deposits of pumice and other volcanic materials which are valuable for use in building construction. Numerous trespasses have occurred in this area. Even though the lands are not available to mining location, the Solicitor of this Department has indicated in an opinion, M-36056, of November 10, 1950, that the Materials Act is also inapplicable. He said:

"* * * clause (1) of section 1 of the Materials Act appears to contemplate a situation where there is no other express statutory authority for the disposal of a particular material, and not a situation where there is such authority but it is temporarily suspended as to the material in certain land by virtue of a withdrawal of the land. The word 'temporarily' was used in the sense that a withdrawal can be revoked by the executive branch at any time, and this is equally true of a 'permanent' withdrawal and a withdrawal under the 1910 act.

"It is my opinion, therefore, that minerals in public lands which are included in withdrawals made pursuant to the implied power of the President or in withdrawals made pursuant to the act of June 25, 1910, are not subject to disposal under the Materials Act of July 31, 1947, solely by reason of the withdrawals."

For these reasons I urge the adoption of section 5, proposed by H. R. 4916, to promote the development of sand, stone, gravel, pumice, pumicite, and cinders on the public lands, with a minor clarifying amendment. The 1947 act should not be construed as superseding statutes which make special provision for disposals of such materials from specific areas. An example of such a special provision which should not be affected is found in the act of May 9, 1942 (56 Stat. 273), which provides for the leasing of deposits of "silica sand and other nonmetallic minerals" in certain public lands in Nevada withdrawn under Executive Order No. 5105 of May 3, 1929. An exception should also be made with respect to disposals of materials on reclamation project lands. For example, the special authority under the reclamation laws for the use of materials on such lands by private contractors engaged in the construction of reclamation projects should be retained.

It is recommended, therefore, that H. R. 4916 be amended as follows:

Page 1, line 7, strike out the words "other law" and insert in lieu thereof the words "law other than this Act, except a law providing for the disposition of such materials from specified areas or authorizing their disposition for the purposes and in the manner provided in the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto)."

For the purpose of more clearly identifying the legislation to be amended, the following perfecting amendment is also suggested:

Page 1, line 3, after the word "Act" strike out the semicolon and insert in lieu thereof the words "of July 31, 1947 (61 Stat. 681), as amended by the Act of August 31, 1950 (64 Stat. 571; 43 U. S. C., 1946 ed., Supp. IV, secs. 1185-1188):".

THE PROPOSED SECTION 6

The other amendment proposed to the Materials Act is a new section 6 which would authorize the Secretary of Agriculture to make dispositions under the Materials Act with respect to national forest lands. I have no objection to the adoption of this portion of H. R. 4916 if Congress believes that materials on national forest lands could be best disposed of under the Materials Act. I assume that the Department of Agriculture will indicate the need for this proposed amendment since it relates to lands under its primary jurisdiction.

In the event this section is retained in the bill, the following clerical amendments are suggested:

Page 1, line 8, after the word "of" strike out the word "the" and insert in lieu thereof the word "this".

Page 2, line 2, strike out the word "the" and insert in lieu thereof the word "this".

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

MASTIN G. WHITE,
Acting Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., February 1, 1952.

Hon. JOHN R. MURDOCK,
*Chairman, Committee on Public Lands,
House of Representatives.*

DEAR MR. MURDOCK: Reference is made to your request for a report on H. R. 4916, a bill to amend the act of July 31, 1947 (61 Stat. 681).

Section 1 of the act of July 31, 1947, authorizes the Secretary of the Interior to dispose of materials including but not limited to sand, stone, gravel, yucca, mazonita, mesquite, cactus, common clay, and timber or other forest products

on the public lands, exclusive of the national forests, parks, monuments, and lands reserved for use of the Indians, to the extent that the disposal of such materials is not otherwise authorized by law.

Section 5 as proposed to be added would limit the disposal of deposits of sand, stone, gravel, pumice, pumicite, and cinders on public lands of the United States to the authority granted by the so-called Materials Act. Such deposits would thereby be withdrawn from location and entry under the general mining laws. Disposal of these deposits under the general mining laws has many deleterious effects upon resource and land conservation and other land-management programs. The general mining laws permit no control of mining operations, and no land protective, restoration, or rehabilitation measure may be required of a mining claimant. Neither is it possible to weigh the relative economic and social benefits to be derived from the exploitation of these deposits against the possible adverse effects, such as the creation of spoil banks, soil erosion, stream pollution, sedimentation, and siltation. A permit or leasing system would make it possible to determine the net public benefit in arriving at a decision for or against exploitation. It also would permit the attachment of conditions requiring soil and watershed protection, rehabilitation, revegetation, and restoration in the public interest. It would put an end to the location of mining claims for the enumerated substances, many of which are marginal in nature, to obtain title to valuable land, water, timber, recreational, and other resources unrelated to or unnecessary for the conduct of mining operations. Since minerals of this nature are generally near the surface and may be removed within relatively short periods of time, there is no necessity that ownership of the surface and surface resources pass from the Government. The larger public interest can best be protected through a permit or lease system.

Section 6 as proposed to be added would give to the Secretary of Agriculture, with respect to lands in the national forests, the same authority as to the materials described in section 1 as the 1947 act vests in the Secretary of the Interior in lands under his jurisdiction. It would not duplicate or conflict with any present authority of the Secretary of Agriculture since disposals otherwise authorized by law are excepted from the purview of the act. The nature and use of the materials described and the fact that land management and protection measures are of primary importance in the disposal of such deposits make it desirable that the authority for their exploitation be vested in the Secretary having jurisdiction over the surface. Utilization of resources such as sand, stone, gravel, pumice, pumicite, and cinders is most frequently local in nature or by local operators. The authority, if granted, will be delegated to the Chief of the Forest Service with the authority to redelegate to field officials which will assure speedy local action on applications.

It is not anticipated that the enactment of this measure will require any additional expenditure on the part of the Government. Revenues to the Government will be increased since a charge commensurate with the value of the use will be made where a permit or lease is issued for the removal of any of the described materials. Sand, stone, gravel, pumicite, pumice, and cinders can now be removed from a valid mining claim without the payment of any remuneration to the Government.

To obtain a placer mining patent a claimant pays \$2.50 an acre. He is not, however, required to obtain a patent to hold a claim or remove materials therefrom. Loss in revenue from this source, probably, would be more than offset by revenue from permits and leases and by the savings to the Government in investigating the validity of claims and protesting patent of questionable claims and in generally facilitating management of the national forests.

This Department recommends enactment of the bill.

The Bureau of the Budget advises that, from the standpoint of the program of the President, there is no objection to the submission of this report.

Sincerely,

C. J. McCORMICK,
Under Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

61 STAT. 681, 43 U. S. C., SEC. 1185

That the Secretary of the Interior, under such rules and regulations as he may prescribe, may dispose of materials including but not limited to sand, stone, gravel, yucca, manzanita, mesquite, cactus, common clay, and timber or other forest products, on public lands of the United States if the disposal of such materials (1) is not otherwise expressly authorized by law, including the United States mining laws, (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this Act and upon the payment of adequate compensation therefor, to be determined by the Secretary: *Provided, however, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any person, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this Act, for use other than for commercial or industrial purposes or resale.* Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior or of a State, Territory, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under this Act only with the consent of such Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this Act shall be construed to apply to lands in any national forest, national park, or national monument or to any Indian lands, or lands set aside or held for the use of benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

SEC. 2. Where the appraised value of the material exceeds \$1,000, it shall be disposed of by the Secretary to the highest responsible qualified bidder by competitive bidding and publication of notice of the proposed disposal once each week for a period of four consecutive weeks in a newspaper of general circulation in the county in which the material is located. Where the appraised value of the material is \$1,000 or less, it may be disposed of by the Secretary upon such notice and in such manner as he may prescribe.

64 STAT. 571, 43 U. S. C., 1946 ED., SUPP. IV, SECS. 1185-1188

SEC. 3. All moneys received from the disposal of materials under this Act shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 1 of the Act of March 4, 1915 (38 Stat. 1214; 43 U. S. C., sec. 353), shall be set apart as separate and permanent funds in the Territorial Treasury as provided for income derived from said school section lands pursuant to said Act.

SEC. 4. Subject to the provisions of this Act, the Secretary may dispose of sand, stone, gravel, and vegetative materials located below high-water mark of navigable waters of the Territory of Alaska. Any contract, unexecuted in whole or in part, for the disposal under this Act of materials from land, title to which is transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State.

SEC. 5. *Deposits of sand, stone, gravel, pumice, pumicite, and cinders when situated on public lands of the United States shall not be subject to acquisition under any law other than this Act, except a law providing for the disposition of such materials on specified areas or authorizing their disposition for the purposes and in a manner provided in the Federal Reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto):* *Provided, that this shall not prevent the location and patenting under the United States mining laws of lands containing such materials, if such locations are based upon the discovery in said lands of other minerals, specifically named in the notice of location, which are subject to location under the mining laws. Rights acquired under such mineral location and any subsequent patent issued pursuant thereto, however, shall be subject to and shall not interfere with the rights of any purchaser to purchase and remove materials which*

have been sold under the terms of this Act where such contracts of sale were made pursuant to notice of sale first published prior to the date of the recordation of said mineral location.

SEC. 6. The provisions of this Act insofar as it relates to the materials described in section 1 shall apply to lands in National forests and such materials when situated on national-forest lands may be disposed of by the Secretary of Agriculture pursuant to the terms, conditions, and limitations of this Act, as hereby amended. All moneys received from the disposal of materials by the Secretary of Agriculture under this Act shall be disposed of in the same manner as other receipts from the land from which the materials are disposed of. The word "Secretary", as used in said Act, shall refer to the Secretary of Agriculture where lands within the National forests are involved.



